IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ALBERT R., JR.,	)	
	)	2 CA-JV 2007-0055
Appellant,	)	DEPARTMENT A
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
ARIZONA DEPARTMENT OF	)	Rule 28, Rules of Civil
ECONOMIC SECURITY and	)	Appellate Procedure
MAXIMILLAN R.,	)	
	)	
Appellees.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. JD-2005-00117

Honorable Joseph R. Georgini, Judge

AFFIRMED

Richard Scherb
Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By William V. Hornung
Tucson
Attorneys for Appellee Arizona
Department of Economic Security

H O W A R D, Presiding Judge.

¶1 Appellant Albert R., Jr., appeals from the juvenile court's July 18, 2007 order terminating his parental rights to his son, Maximillan, who was born in October 2004. Albert contends the juvenile court erred in finding both that the Arizona Department of Economic Security (ADES) had made reasonable efforts to provide appropriate reunification services and that termination of his parental rights was in Maximillan's best interests. We affirm.

¶2 Viewed in the light most favorable to affirming the trial court's findings, *In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994), the record establishes the following. In June 2005, ADES received a report that Albert and Patricia M., Maximillan's mother, had been using methamphetamine daily while in close proximity to seven-month-old Maximillan; that they had been leaving the infant without food, care, or supervision while they slept through the day; and that Albert appeared to have been hallucinating.[1] Child Protective Services (CPS) investigated the report, found evidence supporting the allegations, and took temporary physical custody of Maximillan. In July 2005, Maximillan was placed in the home of Albert's uncle, Ronny R., and Ronny's girlfriend, Leticia G.

¶3 In a dependency petition filed on June 22, 2005, ADES alleged that Albert was unable to parent due to substance abuse and mental illness and that he had neglected

[1]Patricia M.'s parental rights to Maximillan were also terminated on July 18, 2007.

Maximillan. Albert did not contest those allegations, and the juvenile court adjudicated Maximillan dependent as to Albert.

¶4 CPS created a case plan with a goal of family reunification and offered Albert assorted services to facilitate that goal. Those services included random urinalyses, substance abuse evaluation and treatment, a psychological evaluation, a psychiatric evaluation, visitation, parenting classes, parent-aide services, and transportation. At the preliminary protective hearing in June 2005, the juvenile court approved the proposed services as "necessary and appropriate" and found ADES had made reasonable efforts to prevent Maximillan's removal from the home and to reunify the family. The juvenile court made a similar reasonable-efforts finding at the initial dependency hearing in October 2005.

¶5 In a progress report to the juvenile court in April 2006, CPS case manager Seton Piñon reported that Albert had for the most part failed to participate in the services ADES had offered him. He had not completed a psychological evaluation originally scheduled for completion by August 31, 2005, until December 2005. He had called in for random urinalysis "on a few occasions in January 2006," but on the two occasions urinalysis had actually been conducted that month, the results had been positive for amphetamines. Despite repeated referrals, Albert had not yet participated in a substance abuse evaluation or treatment, nor had he begun parenting classes. Piñon also reported that Ronny and Leticia were willing to adopt Maximillan. At the April 2006 permanency hearing, the

juvenile court ordered the permanent goal for Maximillan changed to severance and adoption.

¶6 ADES then filed a motion to terminate Albert's parental rights on three statutory grounds: (1) neglect or abuse, A.R.S. § 8-533(B)(2); (2) mental illness, mental deficiency, or a history of chronic abuse of drugs or alcohol, § 8-533(B)(3); and (3) the length of Maximillan's court-ordered, out-of-home placement, § 8-533(B)(8)(a). At the initial hearing on ADES's motion in July 2006, the juvenile court again found that ADES had made reasonable efforts to reunify the family.

¶7 During the two-day termination hearing in December 2006, the juvenile court permitted ADES to amend its motion to additionally allege, pursuant to § 8-533(B)(8)(b), that Albert had been "unable to remedy the circumstances" that caused Maximillan to remain in care for fifteen months or longer and was not substantially likely to be able to parent adequately in the near future. After the termination hearing, the juvenile court found that ADES had established all four grounds alleged and that severance was in Maximillan's best interests.

¶8 On appeal, Albert challenges the juvenile court's findings that ADES had "made a diligent effort to provide appropriate reunification services" and that termination of his parental rights was in Maximillan's best interests.[2]

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[2]Because Albert does not challenge any of the juvenile court's other findings, we "assume that their accuracy is conceded." *Britz v. Kinsvater*, 87 Ariz. 385, 388, 351 P.2d 986, 987 (1960).

Discussion

¶9 The juvenile court, as the trier of fact in a severance proceeding, is in the best position "to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). We do not reweigh the evidence, *see Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 927 (App. 2005), and we will affirm a termination order unless no reasonable evidence supports it and the order is clearly erroneous, *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997).

Reunification Services

¶10 Albert relies on *Mary Ellen C. v. Arizona Department of Economic Security*, 193 Ariz. 185, ¶ 1, 971 P.2d 1046, 1047-48 (App. 1999), in which this court reversed a termination order after finding ADES had failed to make a reasonable effort to rehabilitate a mentally ill parent in order to preserve the family. In that case, CPS had waited "more than a year after removing the child before referring a mother with a serious mental illness for a psychological evaluation." *Id.* ¶ 35. The doctor who conducted the psychological evaluation in *Mary Ellen C.* had opined that the mother needed intensive mental health services and should be evaluated psychiatrically. Although he doubted that she could resolve her mental health issues in less than a year, he suggested that "intensive psychiatric services might turn [her] around sooner." *Id.* ¶ 9 (emphasis omitted). CPS then delayed

another three months before it referred the mother to a mental-health provider. It "never followed up sufficiently to secure . . . records of her progress" and so never learned that the services being provided were inconsistent with the "intensive psychiatric services" recommended by its consultant. *Id*. ¶¶ 35, 37. The court in *Mary Ellen C.* concluded that, although ADES is not required to undertake rehabilitative measures that are futile, "it is obliged to undertake [measures] which offer a reasonable possibility of success." *Id*. ¶ 1.

¶11 Here, in the report Dr. Carlos Vega prepared after Albert's December 2005 psychological evaluation, Vega opined that Albert suffered from schizophrenia and methamphetamine dependence "in questionable remission." Vega concluded Albert was "in dire need of psychiatric intervention" and also "in need of remaining clean and sober." Vega wrote:

> Albert is not capable of minimally and adequately parenting any child and will not be able to do so in the foreseeable future. Even after he is psychiatrically stabilized, it's highly unlikely that he will be in a position to provide primary care to any child.

¶12 At the severance hearing, Vega reaffirmed this conclusion but, when questioned, stated he would not absolutely rule out the possibility that psychiatric treatment and medications could have enabled Albert to provide an adequate home for Maximillan. Vega also testified that he was unsure whether Albert had been using drugs at the time of the evaluation, although Albert had denied any drug use. Vega explained that someone under the influence of drugs may exhibit psychotic symptoms and that the withdrawal phase of

drug abuse can "mimic schizophrenia" to the extent that the two are "almost indistinguishable." To rule out schizophrenia as a cause of his symptoms, Vega testified, it would be necessary to ensure that Albert was not using drugs and then assess any improvement in his psychological condition.

¶13 Based on Vega's testimony, Albert maintains that, as in *Mary Ellen C.*, CPS failed to provide him with treatment recommended by its consulting psychologist that could have rendered Albert capable of parenting Maximillan and that the juvenile court therefore erred in finding ADES had made a diligent effort to provide appropriate reunification services. Moreover, Albert argues that, because ADES has not established that additional services would have been futile, termination of his parental rights is premature.

¶14 We appreciate that the sufficiency of efforts to provide reunification services may present a more difficult question when a parent's ability to comply with case plan tasks may be compromised by mental illness. However, "[A]DES is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). Unlike the parent in *Mary Ellen C.* who "diligently followed-up" on CPS's referral for mental health treatment, 193 Ariz. 185, ¶ 10, 971 P.2d at 1049; "participated fully in all of the services offered to her[;] and put forth her best efforts," *id.* ¶ 40, Albert delayed his psychological evaluation and did not participate in a drug assessment or treatment until nearly a year after Maximillan had been taken into custody.

¶15 Moreover, although Albert faults CPS for failing to provide him with psychiatric services, reasonable evidence in the record supports the juvenile court's finding that Albert "refused mental-health treatment." Vega testified that he believed he had referred Albert to Horizon Human Services (Horizon) for further mental health assessment during his December 2005 psychological evaluation. CPS had also, for a second time, referred Albert for a substance abuse evaluation and treatment during December 2005, and Horizon was the same agency that eventually provided those services when Albert began complying with his case plan in May 2006. In her record of an August 2006 Child and Family Team meeting, the Horizon facilitator, Julie Cheetham, wrote that psychiatric services were available to Albert but that he had previously refused them. And Albert himself testified he had twice refused a psychiatric assessment, in June and August 2006, because he did not believe it was necessary; he stated he had not had symptoms of psychosis since he stopped using methamphetamine in January 2006.

¶16 Although Albert did eventually complete parenting classes and substance abuse counseling in September 2006, he has never been fully compliant with his case plan. He has not challenged the juvenile court's findings that he had substantially neglected or willfully refused to remedy, or had been unable to remedy, the circumstances that caused Maximillan's continued out-of-home placement and that, as of the time of the termination hearing, he was unlikely to be able to parent effectively in the near future. We find no error in the juvenile court's conclusions that ADES had made a diligent effort to provide

appropriate reunification services and had established grounds for termination of Albert's parental rights by clear and convincing evidence.

Best Interests

¶17 Before terminating Albert's parental rights, the juvenile court was also required to find, by a preponderance of the evidence, that termination was in Maximillan's best interests. *See Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). Ronny testified that he provided Maximillan a stable home environment and believed it would be years before Albert could provide his son that same stability, if he ever could. Piñon testified that she had visited Maximillan monthly in Ronny's home and had observed that Maximillan was loved, nurtured, and happy there. She had seen a strong bond between Maximillan and Ronny and testified that Maximillan considered his great uncle to be his father. Piñon opined that Ronny could offer Maximillan the permanent, stable, loving home that he deserved but that Albert could not provide.

¶18 Albert argues the state failed to establish that termination of his parental rights was in Maximillan's best interests because, as the juvenile court noted after the close of evidence, Ronny was hestitant to agree with this conclusion. Despite what the juvenile court believed to be Ronny's strong sense of "loyalty to his family," however, reasonable evidence at the termination hearing established, as benefits of severance, that Ronny was providing a stable home for Maximillan, was meeting all of his needs, and wished to adopt him. *See Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d at 945 ("a current adoptive plan is one

well-recognized example" of benefit derived from termination of parental rights; collecting cases); *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998) (juvenile court may consider whether child's existing placement meeting child's needs).

Conclusion

¶19 The record contains reasonable evidence to sustain the juvenile court's findings that ADES made a diligent effort to provide Albert with appropriate reunification services, as required by § 8-533(B)(8) and *Mary Ellen C.*, and that terminating Albert's parental rights is in Maximillan's best interests. For those reasons, and because Albert did not challenge the court's other findings, we affirm the court's order terminating Albert's rights to Maximillan.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge